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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,633	10/19/2001	James M. Kain	20341-68796	6018

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BARNES & THORNBURG
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INDIANAPOLIS, IN 46204

EXAMINER

GARRETT, ERIKA P

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/032,633

Applicant(s)

KAIN, JAMES M.

Examiner

Erika Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-17 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Yuzawa (6,485,097). In regards to claims 1-2,6, 8-10, Yuzawa discloses the use of a juvenile seat (1) comprising a base having a front, a rear, opposite sides (figure 1) and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall (4) having a cavity (51) facing outwardly away from the seating surface; a cup holder (5) comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base; an opened positioned extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; wherein the base provides first & second posts (58) extending into the cavity. In regards to claim 3, the shell includes first & second connectors, each

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connector being formed to include a post opening (53) to receive one of the posts, the connectors pivoting about the posts when the cup holder is moved between the closed and the opened positions. In regards to claim 4-5, further comprising an outer shell surface as a convex shape, the upstanding side wall has a convex shape, and the outer shell surface cooperates with the side wall to continue the convex shape of the side wall to form a smooth convex shape when the cup holder is in the closed position, a base or the cup holder includes a detent (52) to engage a recess provided by the other of the cup holder or the base to prevent free movement of the cup holder from the closed position. In regards to claim 7, the base includes an upstanding sidewall having an inwardly facing wall and an outwardly facing wall, and the cavity is formed in the outwardly facing wall. In regards to claim 11, a juvenile seat comprising a front, opposite sides, a seating surface between the sides, and a back; a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer. In regards to claim 12, one side comprises a generally inwardly facing wall and a generally outwardly facing wall, the outwardly facing wall having a cavity therein to receive at least a portion of the cup retainer in the closed position. In regards to claim 13, the shell includes an outer surface and an inner surface providing the cup retainer, the cup retainer being positioned in the cavity when the cup holder is in the closed position. In regards to claim 14, the outwardly facing wall is convex, and the outer surface is continuous with the outwardly facing wall when the cup holder is in the closed position. In regards to

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claim 15 & 17, further comprising cup holder having a shell and a cup retainer (9), the cup holder being coupled to one of the side of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer (9); wherein the shell includes a outer & inner shell surface, and the side to which the cup holder is coupled includes a support edge to contact a portion of the outer shell surface to support the cup holder. In regards to claim 16, the shell includes an upper portion and a lower portion, and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position (see figure 2). Applicant attention is drawn to figures 1-3 & 9-10.

Claim 1 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Shafer (5,358,307). Shafer discloses the use of a juvenile seat (20) comprising a base (21) having a front, a rear, opposite sides (18) and a seating surface (12) between the sides to receive an occupant, the base having at least one of the sides, an upstanding side wall (18) having a cavity (60) facing outwardly away from the seating surface; a cup holder (62) comprising a shell having an inner surface providing a cup retainer (61) and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and an opened position extending from the base in which the cup retainer is open upwardly, see figure 1 & 5.

Response to Arguments

The examiner has considered and reviewed the applicant's Amendment, filed on March 4, 2003.

Applicant's arguments filed March 4, 2003 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

EG
May 7, 2003


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600